

ZONING BOARD OF APPEALS
MEETING MINUTES
January 10, 2012
4:00 P.M.

CALL TO ORDER: Mr. Greg Dunn, Vice- Chairperson called meeting to order at 4:00 P.M.

ATTENDANCE:

Members Present:	Rick Barnes	Mike Fatt
	Deland Davis	Carlyle Sims
	Greg Dunn	Becky Squires

Members Excused: James Moreno and John Stetler

Staff Present: Christine Hilton, Planning Supervisor
Jill Steele, Deputy City Attorney
Glenn Perian, Senior Planner
Leona Parrish, Admin. Assistant, Planning Dept.

ADDITIONS OR DELETIONS TO THE AGENDA: None

CORRESPONDANCE: None

OLD BUSINESS: None

Mr. Greg Dunn, Vice-Chairperson stated the meeting procedure and that everyone present may speak either for or against an appeal. He stated he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. Greg Dunn stated if denied they may appeal to the Circuit Court.

NEW BUSINESS:

A) **Appeal #Z-01-12: (95 Sunnyside Drive)** Petition from Mr. John F. Dowdle on behalf of Ms. Dorothy Estes, 95 Sunnyside Drive, Battle Creek, MI 49015. Request is for a variance to allow replacement of a storm damaged fence with a 5ft. fence to be erected upon a 4ft. retaining wall; which would have an overall height of 9ft. Parcel is zoned "R-1B Single Family Residential District" located at 95 Sunnyside Drive. The permit application is requested pursuant to Planning and Zoning Code, Chapter 1298.05(4)(B).

Mr. Glenn Perian, Senior Planner outlined the report stating Appeal #Z-1-12 is a petition from Dorothy Estes seeking a dimensional variance to construct a 5 ft. or 6ft. fence on a 4ft. retaining wall on lakefront property at 95 Sunnyside Drive. The property is located in a residential zoning district. Chapter 1298.03 of the zoning ordinance defines the height of a fence as the vertical distance from the ground level at the lowest grade level within 3ft, of either side of such fence to the upper most portion of the fence. In this case, the ordinance allows a 5ft. fence in the front-yards, which is shown on the aerial photo in red on

page 2 of the staff report and a 6ft. fence in the side-yard shown by the green line on the same aerial. **Planning Staff is recommending approval of appeal #Z-1-12 to place a 4ft. fence on top of the existing retaining wall based on** the practical difficulties associated with the drop-off at the retaining wall at the northwest side property line at 95 Sunnyside. The Board may impose additional conditions or modify the request as allowed under the Michigan Zoning Enabling Act.

For this Nonuse (dimensional) Variance:

- A) Staff finds that practical difficulty will in fact exist if the strict requirement of the Ordinance is applied and that the Board is authorized to grant a variance in this case. We believe that the practical difficulty associated with the drop off at the retaining wall at the side property line presents substantially more than a mere inconvenience in this case.
- B) Staff believes that the practical difficulty associated with the drop off created by the retaining wall is exceptional and peculiar to the subject parcel and does not generally exist throughout the City. The slope of the land is not self created and because the ordinance allows for fences on residentially zoned property, we do not believe the lot could reasonably accommodate a fence in the location that the Ordinance allows.
- C) Staff does not believe that if the variance is granted that the intent of the Ordinance will be altered or that the rights of others will be compromised.
- D) Staff does not believe that the variance requested is the minimum necessary to provide relief from the practical difficulty and therefore, recommends approval of a 4ft. fence to be placed on top of the retaining wall on the northwest front and side-yard property line separating 95 and 93 Sunnyside Drive.

Mr. Perian noted that the petitioner brought with them today a revised request (handed out before them today) to remove 31 ft. of fence between the house and the detached garage, and remove 16 ft. of fence back from the lakeside to equal a total amount of 47 ft. of fencing to be removed from the original proposal request of 104 ft. of fence to now equal a total length of fencing to be 57 feet. (see attachment)

Mr. John Dowdle came forward to speak and stated Mr. Jim Burton, adjacent property owner was present also with him here today; noted they shared a discussion and reached an agreement regarding the re-placement of the fence (referenced hand-out) and noted they would like it to be 5 ft. in height

Mr. Rick Barnes asked the petitioner why they are requesting 5 ft. high fence instead of 4 ft. Mr. Dowdle stated because of privacy issues

Mr. Carlyle Sims asked if the petitioner had a chance to review the staff report. Mr. Dowdle stated yes and that the ground level gets lower

Mr. Jim Burton, 93 Sunnyside Drive, adjacent property owner stated he had met with Mr. Dowdle and came up with a plan for a 4 ft. fence and agreed to their plan of 5 ft. with the stipulation that the shorten the distance of the fence length as noted on the hand out document.

Mr. Greg Dunn asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MS. BECKY SQUIRES MADE A MOTION TO APPROVE APPEAL #Z-01-12 TO ALLOW A 5 FOOT FENCE TO BE ERECTED UPON A 4 FT. RETAINING WALL AS AMENDED BY NEIGHBORS AGREEMENT TO BE ONLY A TOTAL OF 57 FT. IN LENGTH; SUPPORTED BY MR. DELAND DAVIS.

MR. GREG DUNN ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; FOUR IN FAVOR (FATT, SIMS, SQUIRES, & BARNES); TWO OPPOSED (DAVIS & DUNN), MOTION APPROVED.

B) Appeal #Z-02-12: (3502 Capital Ave. S.W. & Parcel #0085-00-715-0) Petition from Mr. Wayne White and Mr. Robert A. Cole, 3508 Capital Ave., S.W., Battle Creek, MI 49015. Request is for a variance to waive the required 66 ft. in width for a road right-of-way. Parcels are zoned "O-1 Office District" located at 3502 Capital Ave., S.W. & Parcel #0085-00-715-0. The permit application is requested pursuant to Planning and Zoning Code, Chapter 1230.06(36A).

Mr. Glenn Perian, Senior Planner, outlined the staff report stating Appeal #Z-2-12 is a petition from Mr. Wayne White and Mr. Bob Cole seeking a dimensional variance to allow additional flag lots on property located at 3502 Capital Avenue SW, and property identified with pin #0085-00-7150. The property is zoned O-1 office and the aerial photo on page 2 of the staff report shows the land in question. Chapter 1230.06 of the zoning ordinance says that a flag or panhandle lot means a lot which has all of the following characteristics: 1) It has less than the required frontage or no frontage on a public street, 2) It is located behind one or more lots which have frontage on a public street and 3) Access to it is gained by an easement, license, corridor, alley, or private road less than 66' in width off of or from a public street. In this case, the Appellant would like the ability to create additional lots using the existing 20ft. wide paved easement for access to Capital Avenue S.W. on the subject property. **Planning Staff is recommending approval of appeal #Z-2-12** based on the following findings and those contained in the staff report.

- A) Staff finds that practical difficulty does in fact exist if the strict requirement of the Ordinance is applied to this specific request and that the Board is authorized to grant a variance in this case. We believe that the practical difficulty associated with the slope of the land and the existing wetlands presents substantially more than a mere inconvenience for future development in this case. Furthermore, the existing 20' access easement has been constructed to the satisfaction of the fire inspector and appears to be adequate to handle existing and future traffic flows that may be generated.
- B) Staff believes that the practical difficulty associated with the slope of the property and the wetlands are exceptional and peculiar to the subject parcel and does not generally exist throughout the City. The wetlands and slope of the land is not self created and the existing access drive has been constructed in light of these obstacles.
- C) Staff does not believe that if the variance is granted that the intent of the Ordinance will be altered or that the rights of others will be compromised.
- D) Staff believes that the variance requested is the minimum necessary to provide relief from the practical difficulty of the slope and wetlands of the subject property.

Mr. Robert Cole, 274 Central St. and Mr. Wayne White, 3508 Capital Ave., S.W., are present to speak. Mr. Cole referenced the aerial map and noted that the wet lands and water table would require a lot of soil to be brought as fill-in the wet-land area in order to widen the existing driveway.

Mr. Greg Dunn asked what their plans were for developing the land. Mr. Cole stated the rear parcel would be split in to two parcels with one or two buildings and would not have a high density; stated Mr. White has two splits along with the remainder.

Ms. Jeanine Deal came forward to speak and stating that the parcel would be split twice and the remainder would equal a total of three lots as the wet lands would cause a problem.

Mr. Dunn asked if it were possible to split one in the front and one in the back. Ms. Deal stated because of the wet land it would not be buildable.

Mr. Cole stated if allowed; out of the 4 acres there would be two buildable lots in the rear along with the wet-land area.

Mr. Mike Fatt asked the petitioner about the house in the photo with the gate at the end of the driveway. Mr. Cole stated it is an office and not a residence and the office building is owned by Mr. White.

Mr. Greg Dunn asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. CARLYLE SIMS MADE A MOTION TO APPROVE APPEAL #Z-02-12 FOR A DIMENSIONAL VARIANCE TO ALLOW FLAG LOTS BY WAIVING THE REQUIREMENT FOR LOTS TO HAVE FRONTAGE ON A PUBLIC STREET AND TO ACCESS SAID LOTS BY AN EASEMENT, LICENSE, CORRIDOR, ALLEY, OR PRIVATE ROAD LESS THAN 66 FT. IN WIDTH OFF FROM A PUBLIC STREET AS REQUESTED ON THEIR APPLICATION; SUPPORTED BY MS. BECKY SQUIRES.

Discussion:

Mr. Mike Fatt stated the current driveway runs back to an Stock Brokerage office which only has a small amount of activity; asked how much more traffic would there be if other businesses are built. Said he feels the roadway needs to be wider to allow for better traffic flow to maybe 30 ft. as it is now barely enough for two cars. Noted the driveway should be greater than 20 ft. as it would be possible to widen; even if they needed to move the trees in order to do so.

Mr. Greg Dunn made reference to the Fire Marshall document noting that the driveway was sufficient in width; asked if this was done with the knowledge of potential growth for future development. Mr. Perian stated he could not speak on behalf of the Fire Marshall, but that he believes he is aware based on the December 15, 2011 date on the letter.

Mr. Greg Dunn asked if future development would be subject to the ordinance requirements as today it is just a 20 ft. road right-of-way and a flag lot. Mr. Perian stated that any new development would need to be as the ordinance requires.

Mr. Carlyle Sims asked Mr. White if there is room to make the road wider without tearing down a building or filling in the wetlands. Mr. White stated no.

Mr. Mike Fatt asked why they could not widen the road to be 25 ft. Mr. White stated when he purchased in the past there was no flag lot rules and that the sewer runs along the current driveway and to the north it is the boarder-line of the adjacent property, who would not allow them to move the drive onto their property.

Mr. Mike Fatt asked if that border-line was where the boulders are currently. Mr. White stated, yes and that this variance is their last resort.

Mr. Fatt stated the narrowest point is more like a driveway and not a road. Mr. White states the city has a 20 ft. sewer easement and they have a shared easement that starts at 20 ft. and widens to 25 ft.

Ms. Jeanine Deal stated they had approached the adjacent Muscle and Spine business to ask if they could widen their drive to no avail and noted that the entrance portion is wider being 24 ft. Mr. Cole stated there was a 4 ft. shoulder.

Mr. Fatt asked if there was any way to add 4 ft. of pavement to the north side of the driveway. Mr. Cole stated they would run into either wet-lands or the adjacent property.

Mr. Cole wanted to make note that the Fire Marshall evaluation was based on their request for this variance appeal. Ms. Deal added that the Fire Marshall noted that when the property was sold they would reassess; so when Mr. White wants to sell it would be assessed then when the development is being done.

Mr. Fatt stated if the roadway was approved it would be a done deal and would not be a part of any new development. Ms. Christine Hilton, Planning Supervisor stated a site plan would need to be approved for any new development and the conditions of the road would be reviewed for maintenance etc. and that if the width is approved it is what is accepted.

Mr. Greg Dunn asked if the access would then be evaluated for whatever business is built. Ms. Hilton stated, yes that was correct.

Mr. Carlyle Sims stated his concern is the Fire Department having adequate access and if they agree it is not a problem and they have given their approval; he would be in agreement as the owners would be taking care of the driveway and not the city.

Mr. Deland Davis stated he understands Mr. Fatt's concern and if it can be widened it should be and he can only see one place where it can be, which is near the end of the road and would not be of any benefit.

Mr. Fatt stated he feels the area he is concerned about can be made a few feet wider.

Mr. Greg Dunn stated he does not agree with the statement regarding the old Battle Creek Township guidelines being different and that the City of Battle Creek is trying to bring all properties up to meet the

cities codes. Said he is in agreement with the staff report and feel we do need new development and would be in favor of this request.

MR. GREG DUNN ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; FIVE IN FAVOR (DAVIS, DUNN, SIMS, SQUIRES, & BARNES); ONE OPPOSED (FATT), MOTION APPROVED.

- C) **Meeting Dates for Year 2012:** Approval of monthly meeting dates for the Zoning Board of Appeals for the Year 2012.

MOTION WAS MADE BY MR. CARLYLE SIMS TO APPROVE THE 2012 MEETING DATES FOR THE ZONING BOARD OF APPEALS AS PRESENTD; SUPPORTED BY MS. BECKY SQUIRES.

MR. GREG DUNN ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; ALL IN FAVOR; NONE OPPOSED, MOTION APPROVED.

- D) **Review of Proposed Amendments to the By-Laws:**

A copy of the proposed by-law revision was handed out for review.

Ms. Becky Squires made reference to the section allowing City Commissioners to be a member of the Zoning Board; states as having been a City Commissioner she does not believe a City Commissioner need to be on the board.

Ms. Hilton stated it is the State Statute Enabling Act that is making that requirement.

Ms. Jill Steele, Deputy City Attorney stated if the bylaws say they cannot and the State Statute says we do we would have a problem as someone could challenge if it were not in the by-laws.

Mr. Greg Dunn asked if another body can approve their by-laws. Ms. Steele stated, no.

Mr. Glenn Perian noted that in Article 2, Sec. 1 it states "may" be a member.

Mr. Deland Davis asked if they may take time to review the changes and not make a decision today. Ms. Hilton stated that was their intent for the board to review and then discuss at a later date.

- E) **Election of Officers:**

Nomination for Chairperson:

Mr. Deland Davis nominated Mr. John Stetler as Chairperson; seconded by Mr. Mike Fatt.

MR. GREG DUNN ASKED FOR ANY ADDITIONAL NOMINATIONS, SEEING NONE A VOTE WAS TAKEN; ALL IN FAVOR; NONE OPPOSED, APPROVED.

Nomination for Vice-Chairperson:

Mr. Deland Davis nominated Mr. Greg Dunn as Vice-Chairperson; second by Mr. Carlyle Sims.

MR. GREG DUNN ASKED FOR ANY ADDITIONAL NOMINATIONS, SEEING NONE A VOTE WAS TAKEN; ALL IN FAVOR; NONE OPPOSED, APPROVED.

APPROVAL OF MINUTES:

MOTION: WAS MADE BY MS. BECKY SQUIRES TO APPROVE THE SEPTEMBER 13, 2011 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED BY MR. CARLYLE SIMS.

ALL IN FAVOR; NONE OPPOSED, MOTION CARRIED – MINUTES APPROVED.

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF:

Mr. Mike Fatt noted that he does not feel obligated to approve something when persons are aware when they purchased the property that there are issues with the land and feel the driveway should have been made wider.

Mr. Carlyle Sims stated they do not want to prevent growth for Battle Creek as the property is in an area that is in demand. Mr. Sims also wanted to thank the staff for the work that is done for their reports.

ADJOURNMENT: Mr. Greg Dunn made a motion for the meeting to be adjourned; Ms. Becky Squires second, meeting was adjourned at 5:03 P.M.

Submitted by: Leona A. Parrish
Administrative Assistant, Planning Department